

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

June 21, 2011

In the Matter of C. IRWIN, Minor.

No. 301702

Clinton Circuit Court

Family Division

LC No. 09-021389-NA

Before: WHITBECK, P.J., AND MARKEY AND K. F. KELLY, JJ.

PER CURIAM.

Respondent J. Cramer appeals by right the trial court order terminating her parental rights to the minor child, C. Irwin, under MCL 712A.19b(3)(b)(i), (c)(i), (g), and (j).¹ The trial court also terminated the father's parental rights, but he is not a party to this appeal. We affirm.

¹ Under MCL 712A.19b(3), "[t]he court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:"

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under . . . the following circumstance[]:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to

I. FACTS

A. PETITION FOR REMOVAL

On June 16, 2009, petitioner Department of Human Services (DHS) filed a petition seeking removal of C. Irwin from J. Cramer. DHS alleged, in pertinent part, that C. Irwin was brought to the Clinton Memorial Hospital on June 12, 2009, by her maternal grandmother, with multiple bruises on her face, arms, shoulder, legs, and back, in various stages of healing. She also had human bite marks on her face, arm, and back. Her face was extremely swollen. DHS further alleged that J. Cramer failed to protect C. Irwin by allowing an unrelated child to physically assault her daughter for one week. J. Cramer reported that her boyfriend of three weeks might have caused some of the injuries, and J. Cramer stated she did not want to be a parent anymore; but she also stated that she and her new boyfriend were trying to have a baby. The boyfriend, James Gribben, had a criminal history that included domestic violence and felony accessory after the fact in 2004, stalking in 2005, and reckless driving in 2007. C. Irwin was placed with a relative. The trial court found that it was contrary to C. Irwin's welfare to be returned to J. Cramer.

J. Cramer requested a trial on the allegations in the petition. Rodney Gill, Children's Protective Services (CPS) worker, reported that C. Irwin was placed with the maternal grandparents, and the placement was going well. J. Cramer was cooperating and understood that a foster care worker would be meeting with her to set up a parent/agency agreement. However, at a pretrial hearing in July 2009, J. Cramer was tested during a break in the proceedings and found positive for THC and cocaine.

B. J. CRAMER'S PLEA

On August 5, 2009, J. Cramer responded to an amended petition. J. Cramer pleaded no contest to paragraph one, which had been amended to read that J. Cramer and the maternal grandmother brought C. Irwin to the hospital; paragraph two, which had been amended to read that J. Cramer allowed an unrelated child to physically assault C. Irwin for "two to three days" instead of "one week"; and paragraph three, which had been amended to state that she had known James Gribben "for some time," and that none of these things started happening" to her daughter until she and Gribben moved into the apartment. (The sentence stating that J. Cramer felt her boyfriend might have caused some of the injuries was deleted from the amended petition). The trial court accepted J. Cramer's plea to the petition "as amended and supported on the record" and took jurisdiction.

provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

C. AUGUST 2009 HEARING

A dispositional hearing was held on August 27, 2009. Renee Kalich, foster care worker, reported that C. Irwin was doing very well. No visitation had been held since J. Cramer was arraigned in July 2009 and was unable to pay bond. Kalich reported that, during visitation before the incarceration, C. Irwin seemed “extremely uncomfortable” and “anxious” during her visitation with J. Cramer and was “trying to leave the visitation room to get back to her grandmother.” However, after a few visits, she seemed more comfortable, “but the interactions and communication between mother and daughter [were] not very significant, it was quite quiet in the visitation room.” J. Cramer was then incarcerated in jail with an unknown release date. She had lost both her job and her apartment. Once she was released, Kalich would refer her for random weekly drug screens, a substance abuse evaluation, and a parenting class. The trial court adopted the recommendations and ordered J. Cramer to comply with the case service plan and all DHS referrals and recommendations.

D. NOVEMBER 2009 HEARING

At a November 2009 dispositional review and permanency planning hearing, Kalich reported that C. Irwin continued to do well with her maternal grandparents. No visitation with J. Cramer had occurred because J. Cramer was still incarcerated in jail “for her pending child abuse charges.” She had pleaded no contest to attempted third-degree child abuse. J. Cramer told Kalich that, upon her release, she would be residing with a friend of the family and looking for a job. J. Cramer understood that, when she was released, services would be provided, including drug screens, substance abuse evaluation, parenting classes, and possibly a psychological evaluation. She had participated in some anger management classes and ministry programs in jail. J. Cramer had signed a parent/agency agreement. J. Cramer was very remorseful about the situation and wanted to do what was needed so that she and her daughter could be together again. The trial court adopted all recommendations.

E. FEBRUARY 2010 HEARING

At a February 2010 dispositional review and permanency planning hearing, Kalich reported that C. Irwin continued to do well with her maternal grandparents, with no special needs or concerns. Supervised visitations were being held once a week at the agency and additional supervised visits at the grandparents’ home. C. Irwin enjoyed the interactions and was receptive to J. Cramer. J. Cramer had been released from jail in November 2009. She would be on probation for two years, during which time she could not use or be around alcohol or drugs and must submit to random drug screens. Kalich was coordinating services with J. Cramer’s probation officer, Joyce Essich. Initially, J. Cramer moved in with friends of the family, but she was now living in Gribben’s home with him and his mother and stepfather, which was problematic. J. Cramer’s six drug screens were negative. J. Cramer completed a substance abuse evaluation on December 3, 2009. The results were “a guarded prognosis,” and J. Cramer “may need some time to progress in treatment and her goals.” She was diagnosed with alcohol and cannabis abuse, and possible cocaine abuse.

J. Cramer had a history of depression and was receiving outpatient treatment with Dave Reitzell at the Clinton County Counseling Center. Reitzell reported that J. Cramer had “little to no motivation to make changes” and remained in denial concerning her depression and the

concerns about her living with Gribben. Reitzell had provided J. Cramer with numerous resources for services and assistance, but she had not followed through. He further reported that J. Cramer showed signs of chronic marijuana use such as sleeping long hours, depression, lack of motivation, and lack of understanding the consequences of her actions. J. Cramer completed a psychological evaluation in December 2009. The report stated that J. Cramer exhibited polysubstance dependence, including alcohol, cocaine, and marijuana, and she was presently in denial about her substance abuse and was anxious. She had compulsive traits with antisocial and dependent personality features. Her prognosis was “guarded to poor.”

Kalich testified that she had referred J. Cramer to a class that began in January 2010. But J. Cramer attended only one class then asked for a new referral. Kalich provided J. Cramer with a new referral, but J. Cramer had indicated that she was unable to attend that class because of a prior commitment to help her boyfriend’s sister with something.

Kalich had “significant concerns” about J. Cramer’s current residence and her lack of motivation to make changes in her life and to understand the seriousness of her situation and her actions. J. Cramer had not reported to her probation officer that she was living with Gribben. Indeed, she had told Essich that she had no contact with him. She gave Essich the correct address, but stated that she was residing with friends of the family and gave Essich the names of Gribben’s mother and stepfather, without revealing how she knew them. The grandparents reported that J. Cramer was not visiting C. Irwin as often as she did before she moved in with Gribben. Kalich and Essich were both concerned about J. Cramer residing with Gribben because of “the previous history between them, the drug use, domestic violence, and the child abuse that happened to [C. Irwin]” when she resided with J. Cramer and Gribben. The trial court found that progress had not been made. The trial court informed J. Cramer that the one-year permanency planning hearing was coming up. J. Cramer had until the next hearing to “show me what your intentions are.”

F. MAY 2010 HEARING

The next dispositional review and permanency planning hearing took place in May 2010. Kalich reported that C. Irwin had bonded with her maternal grandmother and stepgrandfather. J. Cramer had weekly visits with C. Irwin at a DHS office and additional visits at the grandparents’ home. C. Irwin was receptive and involved in different activities with J. Cramer. J. Cramer continued to reside with Gribben and his mother and stepfather, but J. Cramer reported that the relationship was coming to an end because they did not get along. She was planning to get her own place once she could afford to do so. She was unemployed and told Kalich that she had put in a few applications and had gone to a temp agency. At this point, she was dependent upon Gribben because he was supporting her. Kalich opined that, until J. Cramer got her own income, she would remain in that relationship. Kalich believed that J. Cramer had not “put in a lot of applications” because she had lost motivation and was “sort of floundering.”

In February 2010, J. Cramer had been up for a potential probation violation. Part of the “resolve of the criminal charges” of child abuse, was that J. Cramer made “a plea against Gribben indicating that he committed the bulk of the abuse or all of the abuse.” The trial court had ordered that there be no contact between C. Irwin and Gribben, and no unsupervised parenting time as long as J. Cramer was still involved with Gribben. She had been prescribed an antidepressant, but she stopped taking it “because she does not like taking pills.”

J. Cramer continued substance abuse counseling through Dave Reitzell. Reitzell reported that J. Cramer canceled two sessions in March, and that she was not willing to discuss any topics during therapy. He reported that she continued to “show complete ambivalence regarding custody of C. Irwin. She gives the impression of being unable or unwilling to care for her own needs let alone those of a child.” Reitzell did not believe J. Cramer had improved or made any progress.

DHS reports stated that there were no concerns with J. Cramer’s parenting time and interactions with C. Irwin, with the exception that follow-through with discipline was “sometimes a concern.” Kalich recommended the goal be changed to adoption. The grandparents wished to adopt C. Irwin for permanency and to have parental discretion.

The trial court found that J. Cramer had made no progress toward reunification. The trial court decided to provide another three-month period during which J. Cramer needed to “show some sort of turn around” in her motivation, follow-through, commitment, and “understanding about why this case came before the Court in the first place.”

G. AUGUST 2010 HEARING

The next dispositional review and permanency planning hearing was held in August 2010, and foster care worker Kelcy Ensign testified. J. Cramer had moved into a trailer, assisting an older man in exchange for free rent. J. Cramer indicated that she and Gribben were no longer in a relationship. However, DHS was concerned because they were still in the same trailer park complex and, throughout this case, she had maintained this relationship with a man she had earlier claimed was responsible for the abuse against her child. The trial court order, that J. Cramer could not have unsupervised contact with C. Irwin as long as she was still in contact with Gribben, was still in force. Because of that, she had never had unsupervised visitation. The visitation monitor reported that J. Cramer still struggled with appropriate discipline.

J. Cramer remained unemployed. According to her probation officer, J. Cramer was required to fill out 20 applications a week, beginning in June 2010. However, she had only filled out 20 applications total since that time and had three interviews. The probation officer reported that J. Cramer did not appear motivated to make the necessary changes to make a home for C. Irwin.

Reitzell indicated that J. Cramer’s attitude had improved, and she was willing to discuss topics more freely. He did not believe that she needed any psychotropic medication. However, she did not follow through on her verbal willingness to do the required actions.

DHS sought termination of J. Cramer’s parental rights. The permanency plan would be adoption by the current caregivers. Ensign opined:

I would definitely say that in a case such as this where this kind of abuse has occurred, in order to make . . . substantial progress to allow a return home there has to be some form of admitting and wanting to change . . . and can admit to those faults it’s tough to assess if she’s able to care for this child without the chance of this happening again in order for barriers to be alleviated. I mean, we

need a hundred percent participation and that definitely hasn't happened in this case.

The trial court found that J. Cramer had not made sufficient progress during this reporting period toward reunification. The trial court continued:

This child has been out of the home for 14 months and we are no closer today to having the parents comply with and benefit from the case service plans than we were 14 months ago. So at this point I am going to authorize the filing of a termination petition by the DHS.

H. PETITION FOR TERMINATION

DHS filed the petition to terminate J. Cramer's parental rights in September 2010. It reiterated the original allegations to which J. Cramer had pleaded no contest, but added, in pertinent parts, that: (1) on June 26, 2009, J. Cramer admitted physically abusing her daughter and hitting her with a plastic shopping cart three or four times; (2) J. Cramer was arrested and sentenced to two years' probation for attempted third-degree child abuse; (3) J. Cramer did the bare minimum to comply with her probation; (4) on August 8, 2010, J. Cramer told the DHS that she had been kicked out of the trailer of the older man and was moving back to Gribben's home; and (5) J. Cramer failed to find employment and did not comply with the instructions of the probation officer.

I. TERMINATION HEARING

CPS worker Rodney Gill explained how this case came into the court because of the physical abuse of C. Irwin. Initially, J. Cramer had placed the blame for all the bruising and bite marks on Kendel, a two-year-old that she had been babysitting. A medical report stated that a two-year-old may have bitten C. Irwin but could not have caused the excessive bruising that C. Irwin sustained on her face and body parts. The report also indicated that hair had been yanked from her head, and she had other injuries, including "spanking by an instrument." On June 26, 2009, Gill received a call from police indicating that J. Cramer had admitted to striking C. Irwin three or four times with a plastic toy shopping cart.

J. Cramer's probation officer, Essich, testified that, when she first met J. Cramer, J. Cramer denied that she had abused her daughter in any way and stated that she thought Gribben abused C. Irwin. J. Cramer denied having any contact with Gribben. J. Cramer later stated that she had moved and was living with friends. However, Essich eventually learned that J. Cramer was in fact living with Gribben and his parents. Essich testified that J. Cramer did not demonstrate the motivation to get her life in order. Essich was concerned about her employment situation, her lack of a vigilant search, and her lack of motivation.

Foster care worker Kalich testified that Reitzell's substance abuse evaluation indicated that J. Cramer did not believe she had a substance abuse problem and did not want to discuss it. She believed that her drinking and marijuana use did not affect her ability to parent C. Irwin. Therefore, treatment would be difficult and prognosis was guarded. Although J. Cramer attended counseling, she basically refused to engage in therapy. J. Cramer was ambivalent about whether she wanted C. Irwin back. Her denial about everything made it difficult for her to move

forward. A psychological prognosis of J. Cramer was guarded to poor based on her lack of insight and denial. After the initial positive test, the rest of her drug tests were negative.

Ensign took over as caseworker in May 2010. J. Cramer's housing situation with Gribben and his parents remained a concern and was not appropriate for C. Irwin. J. Cramer told Ensign that she had nowhere else to go and that, if she left, Gribben would want to go with her. J. Cramer had not shown that she could provide stable and appropriate housing for C. Irwin. J. Cramer "at best partially complied" with the parent/agency agreement. She never obtained employment. She did not sufficiently benefit from services. Ensign would not be comfortable returning C. Irwin to J. Cramer's care. During recent visits that Ensign observed, J. Cramer "had a flat affect and spoke to [C. Irwin] in a monotone voice and wasn't fully engaged with [C. Irwin] during visits." Ensign recommended that termination of J. Cramer's parental rights would be in C. Irwin's best interests.

Sandra McMaster, maternal grandmother and foster mother to C. Irwin, did not believe that J. Cramer had a proper home for C. Irwin or that J. Cramer would be able to provide proper care or custody for C. Irwin. She believed that there was a "very small bond" between C. Irwin and J. Cramer but that C. Irwin loved J. Cramer.

The trial court found clear and convincing evidence to support termination of J. Cramer's parental rights under MCL 712A.19b(3)(b)(i), (c), (g), and (j). The trial court also found that termination was in C. Irwin's best interests because she looked to her caregivers (her grandparents) for all her physical and emotional needs and shared a parent-child bond with them. J. Cramer now appeals.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.² We review for clear error a trial court's decision terminating parental rights.³ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁴ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁵

B. ANALYSIS

² MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

³ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633; *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005).

⁴ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁵ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The “parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent’s custody.”⁶ A parent’s failure to comply with the parent/agency agreement is evidence of a parent’s failure to provide proper care and custody for the child and can be a valid indication of neglect.⁷

Supported by J. Cramer’s no contest plea and conviction, there was clear and convincing evidence that her acts caused the physical abuse that resulted in C. Irwin’s removal from the home. Shortly after being released from jail, J. Cramer moved in with her boyfriend, who she had initially stated may have committed the abuse and who had a criminal history for domestic violence and stalking. She continued to live with him despite the trial court order that no contact was permitted between him and C. Irwin and that J. Cramer would not be permitted unsupervised visitation as long as she was still involved with him. J. Cramer clearly chose her relationship with her boyfriend over her relationship with C. Irwin. During the year and a half that the trial court had jurisdiction, J. Cramer never spent any unsupervised time with C. Irwin, did not make a concerted effort to find employment or try to create a home for C. Irwin, remained in denial about her role in the physical abuse, and failed to demonstrate any motivation to regain custody of C. Irwin. Based on these facts, there was clear and convincing evidence to support the trial court’s conclusion that there was a reasonable likelihood that C. Irwin would suffer injury or abuse in the foreseeable future if placed with J. Cramer.⁸

The conditions that led to the adjudication were the physical abuse of C. Irwin, the fact that J. Cramer was living with a man previously convicted of domestic abuse and stalking, and that she tested positive for illegal substances. The only condition that had changed by the termination hearing was that J. Cramer had not tested positive for illegal substances since that initial screen. However, she continued to live with the boyfriend and clearly had no intent to end that relationship. Although she attended counseling and parenting classes, she did not demonstrate any benefit from them and took no positive steps to change her life situation so that she could be a parent to C. Irwin.⁹ The trial court did not clearly err in finding clear and convincing evidence to support the conclusion that there was no reasonable likelihood that the conditions would be rectified within a reasonable time.¹⁰

Further, based on J. Cramer’s failure to benefit from services or make the necessary changes in her life toward reunification, the trial court also did not clearly err in finding that there was no reasonable expectation that she would be able to provide proper care or custody within a reasonable time.¹¹

⁶ *In re Gazella*, 264 Mich App at 676.

⁷ *In re JK*, 468 Mich at 214; *In re Trejo Minors*, 462 Mich at 360-363, 361, n 16.

⁸ MCL 712A.19b(3)(b)(i) and (j).

⁹ *In re Gazella*, 264 Mich App at 676.

¹⁰ MCL 712A.19b(3)(c)(i).

¹¹ MCL 712A.19b(3)(g).

We conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of J. Cramer's parental rights.

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Once DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights.¹² There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.¹³ We review the trial court's decision regarding the child's best interests for clear error.¹⁴

B. ANALYSIS

J. Cramer never made C. Irwin's best interests a priority. She chose her relationship with her boyfriend over her relationship with C. Irwin, and was never permitted unsupervised visitation because of this decision. She did attend counseling and parenting classes, but she did not demonstrate any benefit from these services. Although there was a relationship between J. Cramer and C. Irwin, C. Irwin was more strongly bonded with her foster parents. C. Irwin needed permanency and emotional stability.

We conclude that the trial court did not clearly err in finding that termination of J. Cramer's parental rights was in C. Irwin's best interests.

We affirm.

/s/ William C. Whitbeck

/s/ Jane E. Markey

/s/ Kirsten Frank Kelly

¹² MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 351.

¹³ *In re Trejo Minors*, 462 Mich at 353.

¹⁴ *Id.* at 356-357.